

references 'filed in the United States before the invention thereof by the applicant.' (emphasis added).” And, although certain international application (PCT) filings are considered to be “filings in the United States” for purposes of applying an application publication as prior art,¹ MPEP §2136.03(I) also makes clear that “[f]oreign applications’ filing dates that are claimed (via 35 U.S.C. 119(a)-(d), (f) or 365(a)) in applications, which have been published as U.S. or WIPO application publications or patented in the U.S., may not be used as 35 U.S.C. 102(e) dates for prior art purposes.” Therefore, the filing dates of the foreign applications (i.e., DE 102 25 405.2, filed June 7, 2002 and DE 102 34 787.5, filed July 30, 2002), which Heinzmann claims priority to, may not be used as 35 U.S.C. 102(e) dates for prior art purposes. Thus, for prior art purposes, Hienzmann’s earliest possible 102(e) date is the filing date of the corresponding PCT application; i.e., May 14, 2003.

In contrast, as stated explicitly in MPEP §2136.03(I) “applicant may be able to overcome the 35 U.S.C. §102(e) rejection by proving he or she is entitled to his or her own 35 U.S.C. 119 priority date which is earlier than the reference’s U.S. filing date.” The Applicants’ claim priority back to February 24, 2003 through German application DE 10307825.8. Accordingly, the Applicants’ own 35 U.S.C. 119 priority date of February 24, 2003 antedates Heinzmann’s earliest possible section 102(e) date of May 14, 2003.

In view of the foregoing discussion, Applicants request withdrawal of the rejection of claims 1, 3-5 and 7-9 as anticipated by Heinzmann, and the rejection of claims 2, 6, and 10 as being unpatentable over Heinzmann.

It is believed that all of the pending claims have been addressed. However, the absence of a reply to a specific rejection, issue or comment does not signify agreement with or concession of that rejection, issue or comment. In addition, because the arguments made above may not be exhaustive, there may be reasons for patentability of any or all pending claims (or other claims) that have not been expressed. Finally, nothing in this paper should be construed as an intent to concede any issue with regard to any claim, except as specifically stated in this

¹ If the international application meets the following three conditions: (1) an international filing date on or after November 29, 2000; (2) designated the United States; and (3) published under PCT Article 21(2) in English, then the international filing date is a U.S. filing date for prior art purposes under 36 U.S.C. §102(e). See, e.g., MPEP 2136.03(II).

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paper, and the amendment of any claim does not necessarily signify concession of unpatentability of the claim prior to its amendment.

In view of the foregoing remarks, Applicant respectfully submits that the application is in condition for allowance, and such action is respectfully requested at the Examiner's earliest convenience.

Please charge any additional fees, not already covered by check, or credit any overpayment, to deposit account 06-1050, referencing Attorney Docket No. 14219-098US1.

Respectfully submitted,

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Paul A. Pysher
Reg. No. 40,780

Fish & Richardson P.C.
225 Franklin Street
Boston, MA 02110
Telephone: (617) 542-5070
Facsimile: (617) 542-8906